

written consent to allowance of the filing of the claim for refund except to the extent that the taxes were not withheld from the employee. The employer must retain as part of its records the written receipt of the employee showing the date and amount of the repayment, evidence of reimbursement, or the written consent of the employee, whichever is used in support of the claim.

(ii) Every employer who files a claim for refund or credit of employee FICA tax under section 3101 or employee RRTA tax under section 3201 collected from an employee in a calendar year prior to the year in which the credit or refund is claimed, also must certify as part of the claim process that the employer has obtained the employee's written statement that the employee has not claimed refund or credit of the amount of the overcollection, or if so, such claim has been rejected, and that the employee will not claim refund or credit of the amount. The employer must retain the employee's written statement as part of the employer's records.

(b) *Claim by employee*—(1) *In general.* If more than the correct amount of employee tax under section 3101 or section 3201, or a corresponding provision of prior law, is collected by an employer from an employee and paid to the district director, the employee may file a claim for refund of the overpayment if (i) the employee does not receive reimbursement in any manner from the employer and does not authorize the employer to file a claim and receive refund or credit, (ii) the overcollection cannot be corrected under § 31.3503-1, and (iii) in the case of employee tax under section 3101 or a corresponding provision of prior law, the employee has not taken the overcollection into account in claiming a credit against, or refund of, his income tax, or if so, such claim has been rejected. See § 31.6413(c)-1.

(2) *Statements supporting employee's claim.* (i) Each employee who makes a claim under subparagraph (1) of this paragraph shall submit with such claim a statement setting forth (a) the extent, if any, to which the employer has reimbursed the employee in any manner for the overcollection, and (b)

the amount, if any, of credit or refund of such overpayment claimed by the employer or authorized by the employee to be claimed by the employer. The employee shall obtain such statement, if possible, from the employer, who should include in such statement the fact that it is made in support of a claim against the United States to be filed by the employee for refund of employee tax paid by such employer to the district director. If the employer's statement is not submitted with the claim, the employee shall make the statement to the best of his knowledge and belief, and shall include therein an explanation of his inability to obtain the statement from the employer.

(ii) Each individual who makes a claim under subparagraph (1) of this paragraph for refund of employee tax under section 3101, or a corresponding provision of prior law, also shall submit with such claim a statement setting forth whether the individual has taken the amount of the overcollection into account in claiming a credit against, or refund of, his income tax, and the amount, if any, so claimed (see § 31.6413(c)-1).

[T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 9405, 73 FR 37379, July 1, 2008]

§ 31.6402(a)-3 Refund of Federal unemployment tax.

Any person who pays to the district director more than the correct amount of—

(a) Tax under section 3301 of the Federal Unemployment Tax Act or a corresponding provision of prior law, or

(b) Interest, addition to the tax, additional amount, or penalty with respect to such tax,

may file a claim for refund of the overpayment, in the manner and subject to the conditions stated in § 301.6402-2 of this chapter (Regulations on Procedure and Administration). See § 31.6413(d) and the corresponding section of prior law for provisions which bar the allowance or payment of interest on the amount of any refund based on credit allowable for contributions paid under the unemployment compensation law of a State.